

ARKANSAS SUPREME COURT

No. CR 07-1107

STEVE LENN HILL
Appellant

v.

STATE OF ARKANSAS
Appellee

Opinion Delivered January 24, 2008

PRO SE MOTION FOR ACCESS TO
TRANSCRIPT AND EXTENSION OF
TIME TO FILE BRIEF [CIRCUIT
COURT OF ARKANSAS COUNTY,
SOUTHERN DISTRICT, CR 2005-10,
HON. DAVID G. HENRY, JUDGE]

APPEAL DISMISSED; MOTION
MOOT.

PER CURIAM

In 2005, appellant Steve Lenn Hill was convicted by a jury of residential burglary, three counts of aggravated assault, three counts of kidnapping, first-degree battery and being a felon in possession of a firearm. He received an aggregate sentence of life imprisonment. We affirmed. *Hill v. State*, 370 Ark. 102, ___ S.W.3d ___ (2007). Subsequently, appellant timely filed in the trial court a verified pro se petition under Ark. R. Crim. P. 37.1. The trial court denied the petition without a hearing, and appellant, proceeding pro se, has lodged an appeal here from the order.

Now before us is appellant's pro se motion for access to transcript and extension of time to file his brief. We need not consider the motion as it is apparent that appellant could not prevail in this appeal if it were permitted to go forward. *Pardue v. State*, 338 Ark. 606, 999 S.W.2d 198 (1999) (per curiam); *Seaton v. State*, 324 Ark. 236, 920 S.W.2d 13 (1996) (per curiam). Accordingly, we dismiss the appeal and hold the motion moot.

Appellant complained in his petition that he was actually innocent of the kidnapping charges,

but framed the petition in terms of trial counsel's failure to challenge the sufficiency of the evidence related to those charges. The majority of the petition recounted evidence introduced at trial, and set out appellant's argument that the evidence was insufficient to support his kidnapping convictions.

Appellant's claim of actual innocence amounted to a direct challenge to the sufficiency of the evidence supporting his kidnapping convictions. Sufficiency challenges cannot be raised in Rule 37 proceedings. *Sanford v. State*, 342 Ark. 22, 25 S.W.3d 414 (2000).

Moreover, the weighing of evidence lies within the province of the jury, and the jury is free to believe all or part of a witness's testimony. *Williams v. State*, 351 Ark. 215, 91 S.W.3d 54 (2002), cert. denied, 539 U.S. 907 (2003). It was entirely the jury's task to assess the credibility of witnesses. *Id.* As a result, appellant did not demonstrate that counsel could have raised a successful challenge to the evidence adduced at trial.

Appeal dismissed; motion moot.